IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/10/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 11535 OF 1997

M. Vadivel .. Petitioner

-Vs-

1. The Chancellor,
Bharathiyar University,
rep. by its Secretary,
Coimbatore 641 046.

2. The Vice-chancellor,
Bharathiyar University,
Coimbatore 641 046.

3. Bharathiyar University,
rep. by its Registrar,
Coimbatore 641 046.

4. The Enquiry Committee,
rep. by its Convenor,
Bharathiyar University,
Coimbatore 641 046. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. A.L. Somayaji,
Senior Counsel for
Mr.G. Ethirajulu

For Respondents : Mr.C. Chinnasamy,
Senior Counsel for
Mr. Haja Mohideen Gisthi

:JUDGMENT

The petitioner has prayed for quashing the order dated 30.11.1994 on the basis of the resolution No.250, passed by the syndicate and the consequential order dated 4.6.1997.

2. The petitioner was appointed as Deputy Registrar under the

Bharathiyar University, the third respondent. A departmental proceeding was initiated against the petitioner. For holding the enquiry, five members committee headed by a retired District Judge and consisting of 4 members of the syndicate had been constituted. Six charges had been framed, out of which first three charges, which are relevant for the purpose of the present writ petition, are extracted hereunder :-

" Charge 1

Abuse of Official position as Deputy Registrar of Bharathiar University, Coimbatore, cheating the public, and resultant indulgence in corruption, failure to maintain absolute integrity thereby bringing dis-repute to the fair name of Bharathiar University, lack of loyalty towards the interests of the Bharathiar University and flagrant violation of the conduct rules of the Bharathiar University in force.

Charge II

Abuse of Official position as Deputy Registrar of Bharathiar University, Coimbatore, cheating the public, and resultant indulgence in corruption, failure to maintain absolute integrity thereby bringing dis-repute to the fair name of Bharathiar University, lack of loyalty towards the interests of the Bharathiar University and flagrant violation of the conduct rules of the Bharathiar University in force.

Charge III

Abuse of Official position as Deputy Registrar of Bharathiar University, Coimbatore, cheating the public, and resultant indulgence in corruption, failure to maintain absolute integrity thereby bringing dis-repute to the fair name of Bharathiar University, lack of loyalty towards the interests of the Bharathiar University and flagrant violation of the conduct rules of the Bharathiar University in force."

The petitioner denied the allegations. Ultimately the enquiry committee found the petitioner guilty of three charges extracted above while finding him not guilty in respect of other charges. The syndicate agreeing with the conclusions of the enquiry committee, issued second show cause notice to the petitioner and ultimately passed an order of dismissal. The petitioner filed an appeal before the Chancellor, who by order dated 15.9.1995 remitted the matter to the syndicate for reconsideration. Thereafter the syndicate again passed a resolution to the effect that the earlier decision of the syndicate stands and consequently an order of dismissal has again been communicated to the petitioner. After such subsequent order of dismissal, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner has raised the following contentions :-

(1) The persons who had complained against the petitioner before the Vice Chancellor have not been examined in the disciplinary proceeding and the enquiry report of the committee is based merely on the statement of the Registrar, who had merely produced certain documents before the committee and did not have any personal knowledge in the matter and accordingly the enquiry had been conducted against the principles of natural justice.

(2) During the departmental proceedings, the petitioner had requested for assistance of a legal practitioner which had been illegally rejected by the committee and in the process, the petitioner was not able to defend him

and has been prejudiced.
(3) The enquiry committee consisted of five members and the report has been signed by all the five members, but admittedly one of the members had never attended any sitting of the committee and two others had attended only on some dates and not on all sitting dates and as such the report of the committee must be taken to be vitiated and the disciplinary action taken on such report by the committee cannot be sustained.
(4) Four out of five members of the committee where the members of the syndicate and had signed in the enquiry report and subsequently they also participated in the deliberation of the syndicate which ultimately had passed the order of dismissal and this procedure is against the principles of natural justice.

4. It is convenient to consider the questions raised by the counsel for the petitioner in reverse order. Coming to the last question first, it is seen that out of five members, which constituted the enquiry committee, four were members of the syndicate and had also deliberated upon the matter when the report was placed before the syndicate. According to Mr. Somayaji, learned senior counsel appearing for the petitioner, it is against the principles of natural justice and four other members of the syndicate, “who were biased” by submitting the enquiry report against the petitioner, had participated in the deliberation of the syndicate.

5. The above submission though prima facie attractive to some extent, cannot be accepted. There is no doubt that syndicate is the ultimate authority which has to take a decision in the matter relating to dismissal of an employee like the petitioner. When the allegations were made, the syndicate could have enquired into the allegations itself without appointing an committee. Merely because the syndicate instead of enquiring into the matter itself, appointed a committee consisting of several members of the syndicate along with others and ultimately decided the matter by deliberating upon the report of such committee, which had consisted of some members of the syndicate, it cannot be said that any principle of natural justice had been violated. It is true that some of the members of the committee had subsequently deliberated upon the matter, but it cannot be said that merely because they have given a report adverse to the petitioner, there was any bar for the very same members considering the matter in their capacity as syndicate members. There is nothing on record to indicate that those persons were actually biased against the petitioner nor it can be said in law that there was any bias. Moreover, it appears that this question which has been raised for the first time in the writ petition had not been raised earlier in the appeal before the Chancellor. The contention raised, therefore, fails.

6. The penultimate contention of the petitioner is to the effect that out of five members, one member had remained absent throughout the enquiry and two others had remained absent intermittently, but all the five members have signed the report and this according to the learned counsel for the petitioner has vitiated the disciplinary proceeding and the enquiry report.

7. In the counter affidavit it has been indicated that even

though one of the members was absent throughout the enquiry and two other members have remained absent on a few occasions, all the papers relating to the disciplinary proceedings had been circulated to all the members of the enquiry committee and all of them had deliberated upon the matter before the report was prepared. The Committee has been formed to enquire into the allegations made against the petitioner and to submit report. Law is well settled that the report submitted by an enquiry committee in a domestic enquiry is not binding on the employer or the disciplinary authority and merely recommendatory in nature and the disciplinary authority has every jurisdiction to differ from the findings given by such enquiring authority. It is no doubt true that the enquiry committee consisted of five members, but there is no statutory procedure contemplated that the disciplinary proceedings in respect of the employee under the University has to be attended by all the members at all times. The committee has been merely called upon to enquire into the matter, record evidence and submit report, but the ultimate decision is to be taken by the disciplinary authority. In the absence of any mandatory provision laying down a procedure to the contrary, mere fact that some of the members remained absent on a few occasions and even one of them had remained absent on all the occasions, it cannot be said that the report furnished by the committee was non-est in law. The report was required to be considered and was considered by the disciplinary authority and ultimately the order of punishment was imposed obviously because the disciplinary authority has agreed regarding the delinquency of the concerned officer. The submission of the learned counsel appearing for the petitioner to the effect that the report itself is vitiated and therefore subsequent disciplinary action is illegal is not acceptable. Moreover, it is seen that in the appeal which had been filed by the petitioner before the Chancellor, such a contention had not been raised and therefore it is not open to the petitioner to raise this new contention for the first time in the writ petition filed against the subsequent dismissal order which had been passed after the matter was remanded by the Chancellor.

8. Learned counsel for the petitioner has contended that most of the members of the enquiry committee were experts in law and were conversant with the intricate procedure in a departmental proceeding and keeping in view the nature of allegations made against the petitioner, the authority should have permitted the petitioner to be represented by a legal practitioner. He has also submitted that this aspect of the contention which had been pressed into service in the appeal before the Chancellor has been accepted and the Chancellor had called upon the syndicate to examine this aspect and yet syndicate has again stuck to its earlier decision and has directed for dismissal of the petitioner.

9. The law is now well settled that in a domestic enquiry, the delinquent has no absolute right of being defended by a legal practitioner and the question as to whether such delinquent has to be represented by a legal practitioner is essentially a matter of discretion of the enquiry committee. In the present case, there is no allegation that the person who marshalled the case on behalf of the University was an expert in law or even conversant regarding the intricacies of the departmental proceedings. Merely because some of the members of the enquiry committee were experts in law, is not at all relevant for the purpose of considering as to whether a delinquent

should be allowed to avail of the assistance of a legal practitioner in a departmental proceeding. The question as to whether such a privilege is to be given or not depends upon the quality of the opponent and not upon the quality of the enquiry officer. The basic underlying principle is that the prosecutor or the marshalling officer in the departmental proceedings is an expert in law and the facts are complicated, it would be unfair to expect the delinquent not expert in law to defend himself properly while being pitted against an expert in law. This not being the case, the contention cannot be accepted.

10. Learned counsel for the petitioner has vehemently argued that the procedure adopted at the enquiry is opposed to all canons of natural justice inasmuch as the persons who had made the complaint against the petitioner were not examined as witnesses and their statements made behind the back of the petitioner have been relied upon. Learned counsel for the petitioner has placed reliance upon the decision reported in 1999 (2) SCC 10 (KULDEEP SINGH vs. COMMISSIONER OF POLICE AND OTHERS), 1972 SC 330 (M/s. BAREILLY ELECTRICITY SUPPLY CO. LTD., vs. THE WORKMEN AND OTHERS) and A.I.R. 1969 SC 983 (CENTRAL BANK OF INDIA LIMITED vs. PRAKASH CHAND JAIN).

11. In A.I.R. 1969 SC 983 it was held as follows:-

" It is in this connection that importance attaches to the views expressed by this Court in the cases cited above where it was pointed out that a finding of a domestic tribunal may be perverse if it is not supported by any legal evidence. It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and the statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. . ."

12. In A.I.R. 1972 SC 330 it was held as follows :
" . . . But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balancesheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit

in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. . .”

In 1999(2) SCC 10 similar view had been expressed.

Learned counsel appearing for the respondents on the other hand has placed reliance upon the decision reported in 1982(1)LLJ 46 (STATE OF HARYANA AND ANOTHER v. RATTAN SINGH)

13. In a case where the conclusion of the guilt is based solely on the hearsay evidence or on the basis of statement of some person made behind the back of the delinquent, the position of law as indicated in 1969 SC 983, 1972 SC 330, 1999(2) SCC 10 may be applicable. In the present case as pointed out by the learned counsel appearing for the respondent the finding of guilt of the petitioner is not based on the statement of the Registrar, P.W.1., which is stated to be hit by the principles of hearsay nor by any direct statement of any of the complainants, who have not been examined. The conclusion regarding guilt appears to be based on certain circumstances including the fact that some amount had been received by the petitioner who had tried to explain away by stating that those amount has been received as family transaction. The burden of proving that those amounts had been received for the purpose indicated by the petitioner and not as illegal consideration for securing seats, in the peculiar facts and circumstances of the case, was on the petitioner. When huge amounts had been received and the petitioner had tried to return some amounts by cheques, some of which had subsequently bounced, it cannot be said that the conclusion of guilt reached by the enquiring authority is perverse and solely based on hearsay materials. The decisions relied upon by the learned counsel appearing for the petitioner are not applicable to the peculiar facts and circumstances of the present case. On the other hand the decision relied upon by the respondent reported in 198 2(1) LLJ 46 which is of a bench of higher strength of three judges, as compared to other decisions, appears to be applicable to the facts of the present case.

14. For the aforesaid reasons, I do not find any merit in the writ petition, which is accordingly dismissed. There will be no order as to costs.

Index : Yes
Internet : Yes
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